

1 DANA McRAE, State Bar No. 142231
 2 County Counsel, County of Santa Cruz
 3 JESSICA C. ESPINOZA, State Bar No. 235941
 4 Assistant County Counsel
 5 701 Ocean Street, Room 505
 6 Santa Cruz, California 95060
 7 Telephone: (831) 454-2040
 8 Fax: (831) 454-2115

9
 10 Attorneys for Defendants
 11 COUNTY OF SANTA CRUZ HUMAN
 12 RESOURCES AGENCY/FAMILY &
 13 CHILDREN'S SERVICES AND
 14 SYLVIA HERNANDEZ

15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

<p>12 THERESA LOUISE PASSINEAU, 13 Plaintiff, 14 v. 15 16 MONTEREY COUNTY DEPARTMENT OF 17 SOCIAL AND EMPLOYMENT SERVICES, 18 et. al. 19 Defendants.</p>	<p>Case No. C07-05681 RS 20 21 22 23 24 25 26 27 28</p> <p>SANTA CRUZ COUNTY DEFENDANTS' NOTICE OF MOTION AND MOTION TO DISMISS COMPLAINT AND MOTION FOR A MORE DEFINITE STATEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT</p> <p>Date: January 9, 2007 Time: 9:30 a.m. Dept: Courtroom 4, 5th Floor</p>
---	--

20
 21
 22
 23
 24
 25
 26
 27
 28

TO THE COURT AND PLAINTIFF THERESA LOUISE PASSINEAU: PLEASE TAKE
 NOTICE that on January 9, 2007, at 9:30 a.m. or as soon thereafter as the motion may be heard in
 Courtroom 4, 5th Floor, of the above-referenced court, defendants Santa Cruz County Human
 Resources Agency/Family & Children's Services ("Santa Cruz County") and Sylvia Hernandez
 ("Hernandez"), collectively referred to herein as "Santa Cruz County Defendants," will move the
 Court for an order dismissing plaintiff's complaint pursuant to Federal Rule of Civil Procedure

12(b)(6). In the alternative, Santa Cruz County Defendants will move the Court for an order, pursuant to Federal Rule of Civil Procedure 12(e), requiring plaintiff to file a more definite statement specifically setting forth allegations of unlawful behavior against each Santa Cruz County defendant.

The grounds for this motion are that plaintiff's complaint does not set forth facts sufficient to state a cause of action against defendant Santa Cruz County or the identified social worker for Santa Cruz County, Hernandez. For these reasons, Santa Cruz County Defendants request that the Court dismiss all claims filed by plaintiff against Santa Cruz County and Hernandez, or, in the alternative, require plaintiff to state with particularity and in a non-conclusory fashion sufficient factual allegations against Santa Cruz County and Hernandez so that the Santa Cruz County Defendants may answer the complaint.

This motion is based on this notice of motion, the accompanying memorandum of points and authorities, the pleadings on file in this action, and any other matter the Court deems proper to review at the hearing of this motion.

Dated: November 29, 2007

DANA McRAE, COUNTY COUNSEL

By: _____/S/
JESSICA C. ESPINOZA
Assistant County Counsel
Attorneys for Defendants COUNTY OF
SANTA CRUZ HUMAN RESOURCES
AGENCY/FAMILY & CHILDREN'S
SERVICES AND SYLVIA HERNANDEZ

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Plaintiff Theresa Louise Passineau has filed a complaint against Monterey County Social and Employment Services, two Monterey County social workers, the Monterey County Sheriff's Department, a Monterey County Sheriff's Deputy, the Santa Cruz County Human Resources

1 Agency/Family & Children's Services, and a Santa Cruz County social worker for violation of her
 2 civil rights related to the removal of foster children from her home.

3 Santa Cruz County Defendants move to dismiss all claims filed by plaintiff against Santa
 4 Cruz County and the identified Santa Cruz County social worker, Hernandez, on the grounds that the
 5 complaint does not state facts sufficient to state a cause of action against them; in the alternative,
 6 Santa Cruz County Defendants move for a more definite statement.

7 **STATEMENT OF FACTS**

8 Plaintiff alleges that on or about July 6, 2005, a Monterey County deputy sheriff and a
 9 Monterey County social worker arrived at her residence unannounced and took custody of the four
 10 foster children present at her residence. Plaintiff alleges that the foster children were removed due to
 11 allegations that her husband had sexually abused two of plaintiff's other children who were not at the
 12 residence at that time. Plaintiff alleges that the social worker and deputy entered and searched her
 13 home without a warrant and without consent. Further, plaintiff alleges that the deputy and social
 14 worker had no probable cause to believe the children were in imminent danger. (Plaintiff's
 15 Complaint, ¶¶ 10-11.)

16 The only allegations directed against Santa Cruz County or its personnel are related to the
 17 investigation in the dependency proceeding that followed the events of July 6, 2005. Plaintiff
 18 alleges that Monterey County delegated much of the investigation to Santa Cruz County, whereby
 19 Santa Cruz County, jointly, and under the supervision and direction of Monterey County, conducted
 20 a "patently biased, coercive and one-sided investigation" of plaintiff with "deliberate and callous
 21 indifference to plaintiff's constitutional rights." (Plaintiff's Complaint, ¶16.) Plaintiff further
 22 alleges that as a result of the investigation by Monterey County and Santa Cruz County, the Court
 23 terminated her parental rights. (Plaintiff's Complaint, ¶19.)

24 Plaintiff does not allege any claim for relief related to Santa Cruz County and only one claim
 25 for relief, brought under 42 U.S.C. section 1983, against Hernandez.

26 ///

27 ///

ARGUMENT**I.****THE COURT SHOULD GRANT THIS MOTION TO DISMISS**
PLAINTIFF'S COMPLAINT AS TO SANTA CRUZ COUNTY AND HERNANDEZ**A. Plaintiff's Complaint Contains Insufficient Facts Showing That Hernandez Is Responsible For Any Wrongdoing In This Case**

Section 1983 provides for liability against a “[P]erson who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws” (42 U.S.C. § 1983.) Liability under section 1983 requires that there be an actual connection or link between the actions of the defendant and the deprivation alleged to have been suffered by the plaintiff. (*Monell v. Department of Social Services* (1978) 436 U.S. 658, 691-694; *Rizzo v. Goode* (1976) 423 U.S. 362, 370.) The Ninth Circuit has noted that “a person ‘subjects’ another to the deprivation of a constitutional right within the meaning of section 1983 if he does an affirmative act, participates in another’s affirmative acts or omits to perform an act which he is legally required to do that causes the deprivation of which the complaint is made.” (*Johnson v. Duffy* (9th Cir. 1978) 588 F.2d 740, 743.)

In ruling on a motion to dismiss, courts must accept all material allegations of fact alleged in the complaint as true; however, courts do *not* accept as true legal conclusions cast in the form of allegations if such conclusions cannot be reasonably drawn from the facts alleged. Similarly, the court need not accept unreasonable inferences or unwarranted deductions of fact. (*Sprewell v. Golden State Warriors* (9th Cir. 2001) 266 F.3d 979, 988, *amended* at 275 F.3d 1187; *Western Mining Council v. Watt* (9th Cir. 1981) 643 F.2d 618, 624; *Dubbs v. C.I.A.* (N.D. Cal. 1990) 769 F.Supp. 1113, 1115.) Under Federal Rule of Civil Procedure 8(a), a claim for relief must provide fair notice both of the nature of the claim and the facts that underlie the claim. (*Grid Systems Corp. v. Texas Instruments, Inc.* (N.D. Cal. 1991) 771 F.Supp. 1033, 1037.) Accordingly, conclusory allegations unsupported by any specific facts are not sufficient to defeat a motion to dismiss. (*McCarthy v. Mayo* (9th Cir. 1987) 827 F.2d 1310, 1316; *see also Faruqui v. State of California*

1 (N.D.Cal. 1994) 1994 U.S. Dist. LEXIS 8676, at *4-6 [dismissing claims where plaintiff's
 2 allegations failed to distinguish among the many defendants and were vague, general, conclusory
 3 and contained no facts to support them]; *Scognamillo v. Credit Suisse First Boston LLC* (N.D.Cal.
 4 2005) 2005 U.S. Dist. LEXIS 20221, at *7 et seq. [dismissing claims where plaintiff's allegations
 5 were conclusory and lacked specific facts].)

6 Here, plaintiff's allegations against Hernandez are insufficient, as they are not supported by
 7 any specific facts. In her complaint, plaintiff claims that, “[i]n doing the acts complained of herein,
 8 defendants Mannion and Hernandez acted under color of state law to deprive plaintiff as alleged
 9 herein, of constitutionally protected rights . . .” (Plaintiff's Complaint, ¶ 29.) However, aside from
 10 this conclusory sentence, plaintiff does not provide any further facts regarding Hernandez's alleged
 11 wrongdoing in this matter. Plaintiff does not set forth how Hernandez caused plaintiff damages or
 12 even identify how Hernandez is involved in the events at issue in this case.

13 Plaintiff's complaint fails to put Hernandez on notice of any factual allegations underlying
 14 her claim. Without more, plaintiff's conclusory allegations are insufficient to adequately state a
 15 claim for relief against Hernandez. Accordingly, Santa Cruz County Defendants respectfully request
 16 that this Court dismiss plaintiff's Complaint as to Hernandez.

17 **B. Plaintiff's Complaint Contains Insufficient Facts Showing That Santa Cruz**
County Is Responsible For Any Wrongdoing In This Case

19 Similarly, plaintiff fails to set forth any specific facts concerning Santa Cruz County's
 20 alleged wrongful conduct. Plaintiff's only allegation regarding Santa Cruz County appears in her
 21 Statement of Facts. There, plaintiff alleges that Santa Cruz County “conducted a patently biased,
 22 coercive, and one-sided investigation” (Plaintiff's Complaint, ¶ 16) that ultimately resulted in the
 23 termination of her parental rights. (Plaintiff's Complaint, ¶ 19.) However, plaintiff does not set
 24 forth any specific facts underlying such allegations. And as previously stated, in ruling on a motion
 25 to dismiss courts do not accept as true legal conclusions cast in the form of allegations if such
 26 conclusions cannot be reasonably drawn from the facts alleged and courts need not accept
 27 unreasonable inferences or unwarranted deductions of fact. (*Sprewell, supra*, 266 F.3d at 988;
 28

1 *Western Mining Council, supra*, 643 F.2d at 624; *Dubbs, supra*, 769 F.Supp. at 1115.) Plaintiff's
 2 conclusory allegation is insufficient to support any claim for relief against Santa Cruz County.

3 **C. Plaintiff Has Not Properly Pled a 1983 Violation Against Santa Cruz County**

4 Plaintiff's complaint fails to state a cause of action against Santa Cruz County directly.
 5 Accordingly, assuming that plaintiff's claim against Santa Cruz County is based on the alleged
 6 wrongful conduct of Hernandez, plaintiff fails to properly plead a 1983 violation against Santa Cruz
 7 County. At a minimum, it is necessary to allege conduct which occurred in the execution of a
 8 government's policy or custom promulgated either by its lawmakers or by those whose edicts or acts
 9 may fairly be said to represent official policy. (*Monell v. Dept. of Social Services of the City of New*
 10 *York*, 436 U.S. 658 (1978).) Here, plaintiff's complaint fails to allege Hernandez acted in the
 11 execution of a Santa Cruz County policy or custom. The only allegation against Hernandez is that
 12 she "acted under color of state law to deprive plaintiff" of certain civil rights. (Plaintiff's Complaint,
 13 ¶ 29.) This vague and conclusory allegation is inadequate, as it does not set forth what wrongful
 14 conduct Hernandez was engaged in or what Santa Cruz County custom or policy she was
 15 promulgating or following.

16 However, even if plaintiff could allege that Hernandez was involved in wrongdoing while
 17 carrying out a custom or policy, she still cannot allege a cause of action under section 1983 against
 18 Santa Cruz County based on the facts of this single incident. (*See Oklahoma City v. Tuttle*, 471 U.S.
 19 808, 831 (1985).) In *Oklahoma City*, the court held that a municipal policy sufficient to impose
 20 liability under section 1983 could not be established by a single, isolated instance of misconduct by
 21 an officer. (*Id.* at 831.) Here, plaintiff's complaint only consists of a single incident involving the
 22 removal of children from her home and the subsequent investigation. As there is no *respondeat*
 23 *superior* liability under section 1983 in suits against municipalities, plaintiff cannot properly plead a
 24 section 1983 violation against Santa Cruz County based on one wrongful investigation. (*Id.*; *see also* *Monell, supra*, 436 U.S. at 691.)

26 As plaintiff fails to state a cause of action against Santa Cruz County and cannot properly
 27 plead a section 1983 violation, Santa Cruz County Defendants respectfully requests that this Court
 28 dismiss all claims against Santa Cruz County.

II.

**THE COURT SHOULD GRANT DEFENDANTS' MOTION FOR A MORE
DEFINITE STATEMENT BECAUSE THE COMPLAINT IS UNCLEAR AS
TO WHAT EACH DEFENDANT IS ALLEGED TO HAVE DONE GIVING
RISE TO LIABILITY**

If a complaint is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. (Fed. Rules of Civ. Proc., Rule 12(e).) “The proper test in evaluating a motion under Rule 12(e) is whether the complaint provides the defendant with a sufficient basis to frame his responsive pleadings.” (*Federal Sav. & Loan Ins. Corp. v. Musacchio* (N.D.Cal. 1988) 695 F.Supp. 1053, 1060.) As the Ninth Circuit has noted, “A heightened pleading standard is not an invitation to disregard Rule 8’s requirement of simplicity, directness and clarity. The ‘particularity’ requirement of a heightened pleading standard, requiring ‘nonconclusory allegations containing evidence of unlawful intent,’ as opposed to ‘bare allegations of improper purpose,’ has among its purposes the avoidance of unnecessary discovery.” (*McHenry v. Renne* (9th Cir. 1996) 84 F.3d 1172, 1178.) This purpose is defeated when a pleading fails to provide clear and concise averments stating which defendants are liable to which plaintiffs for which wrongs. (*Id.*)

The court should consider the rights of all parties to fairly and efficiently make their way through litigation. Requiring the parties to plainly state their legal theories and defenses helps achieve that goal. As one court has noted:

“Were we to relegate the acceptable norms of pleading to the province of discovery, we would be abandoning our obligation, and the litigants’ obligation, to expedite the disposition of the action through the discouragement of wasteful pretrial activities as is contemplated by Rule 16(a) and (c), Federal Rules of Civil Procedure. Lastly, we would merely observe that any currently held view that the deficiencies in pleadings may be cured through liberalized discovery is at increasingly mounting odds with the public’s dissatisfaction with exorbitantly expansive discovery, and the impact that the public outcry has had upon our discovery Rules. [citation] To abdicate competent pleading in deference to amplified discovery does a distinct injustice to our responsibility, under Rule 1, Federal Rules of Civil Procedure, to ‘administer’ our procedures so as ‘to secure the just, speedy, and inexpensive determination of every action.’”

(*Eisenach v. Miller-Dwan Medical Center* (D.Minn. 1995) 162 F.R.D. 346, 348.)

As noted above, plaintiff's complaint is vague, ambiguous, and conclusory in several respects. The most glaring problem is that it fails to set forth any facts underlying plaintiff's conclusory claims against Santa Cruz County and Hernandez. Moreover, it fails to set forth a cause of action against Santa Cruz County. The court should require plaintiff to file a more definite statement to cure these defects.

CONCLUSION

For the reasons more fully discussed above, Santa Cruz County Defendants request that the Court dismiss plaintiff's complaint against Santa Cruz County and Hernandez. In the alternative, Santa Cruz County Defendants request that the Court order plaintiff to file a more definitive statement such that the Santa Cruz County Defendants can properly frame a responsive pleading.

Dated: November 29, 2007

DANA McRAE, COUNTY COUNSEL

By: _____ /S/

JESSICA C. ESPINOZA
Assistant County Counsel
Attorneys for Defendants COUNTY OF
SANTA CRUZ HUMAN RESOURCES
AGENCY/FAMILY & CHILDREN'S
SERVICES AND SYLVIA HERNANDEZ

PROOF OF SERVICE

I, the undersigned, state that I am a citizen of the United States and employed in the County of Santa Cruz, State of California. I am over the age of 18 years and not a party to the within action. My business address is 701 Ocean Street, Room 505, Santa Cruz, California 95060. On the date set out below, I served a true copy of the following on the person(s)/entity(ies) listed below:

**SANTA CRUZ COUNTY DEFENDANTS' NOTICE OF MOTION AND MOTION TO
DISMISS COMPLAINT AND MOTION FOR A MORE DEFINITE STATEMENT;
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**

_____ by **service by mail** by placing said copy enclosed in a sealed envelope and depositing the sealed envelope with the United States Postal Service with the postage fully prepaid.

_____ **X** by **service by mail** by placing said copy enclosed in a sealed envelope and placing the envelope for collection and mailing on the date and at the place shown below following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service with postage fully prepaid.

_____ by **personal service** at a.m./p.m. at _____.

_____ by **express or overnight mail** by depositing a copy in a post office, mailbox, sub-post office, substation, mail chute, or other like facility regularly maintained by the United States Postal Service for receipt of express mail or a mailbox, mail chute, or other like facility regularly maintained by an overnight mail company, in a sealed envelope, with express mail postage paid addressed to the below listed person(s).

_____ by **express or overnight mail** by arranging for pick-up by an employee of an express/overnight mail company on:

**Jerome P. Mullins
Attorney at Law
95 South Market Street, Suite 300
San Jose, CA 95113**

I declare under penalty of perjury that the foregoing is true and correct. Executed November 29, 2007, at Santa Cruz, California.

/S/

MARIA VARGAS

**DANA McRAE, COUNTY COUNSEL
COUNTY OF SANTA CRUZ
701 Ocean Street, Room 505
Santa Cruz, California 95060-4068
Telephone: (831) 454-2040
Facsimile: (831) 454-2115**